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**BZA-1722**  
**TIMOTHY & CHRISTINA WHITEAKER**  
**Variance**

**STAFF REPORT**  
**June 22, 2006**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioners, who are also the owners, are seeking a variance to allow a rear setback of 21.834' instead of the required 25' for a 14.166' x 12.292' sunroom addition onto an existing home located at 4684 Elijah Street in Prophet's Ridge Subdivision, Tippecanoe 32 (NE) 24-4. This subdivision is part of the area to be annexed into the city limits of West Lafayette effective August 17, 2006.

**AREA ZONING PATTERNS:**

Prophets Ridge Subdivision Section 1, recorded in 2003, is zoned R1B. Property surrounding the subdivision is zoned R1. The most recent ABZA activity in the area was a special exception request for a home service veterinary office at 4020 Soldiers Home Road in 1990 (BZA-1044).

**AREA LAND USE PATTERNS:**

Land immediately surrounding the property in question is residential; Prophet's Ridge has not yet been built out and many lots remain undeveloped. Land bordering the subdivision in all directions is farm fields and associated residences.

The site in question has a newly constructed house with a concrete patio off the back of the house near the kitchen. To the rear of this lot is a retention pond.

**TRAFFIC AND TRANSPORTATION:**

Elijah Street is classified as a local street. The nearest county road, CR 75 E is also classified as a local rural road. The proposed sunroom addition would have no adverse affect on traffic.

**ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

The site is served by West Lafayette sewer and Indiana/American water. No additional bufferyards would be required and all other setbacks are met. A 10' wide utility easement runs along the back of the property; the planned addition would not intrude into the easement.

Required minimum vegetative coverage in the R1B district is 35% and minimum building coverage is also 35%; both of these ordinance standards can be met on site with the proposed addition.

**STAFF COMMENTS:**

Petitioners are requesting a variance to allow construction of a 14.166' x 12.292' sunroom on an existing concrete patio slab to be 21.834' from the rear property line instead of the required 25'. According to the petition, the concrete slab, currently used as an outdoor patio, was poured by the builder during construction and petitioners were "unaware that it violates a zoning ordinance by being in setback by 3 feet." However, the zoning ordinance states that an unroofed patio is considered an accessory structure, and it may extend into the rear setback within 4' of the lot

line; the patio is only in violation when it becomes a roofed structure and part of the primary use building.

The initial building permit site plan for this single-family home, built in 2004, does not show this patio. Based on Building Commission records, at inspection the County Building Inspector field-approved the patio slab per building code requirements. To erect an enclosed structure on an existing concrete slab, the footings of the patio must meet frost protection grade and if the structure is to be heated, proper concrete insulation is required to prevent the floor from "sweating." As interpreted by a County Building Inspector, the concrete slab meets frost protection grade, but does not have the necessary insulation required for heating the room; if this variance is approved, the Building Commission will provide petitioners or their contractor with procedures for installing after-the-fact insulation when they receive their building permit.

The final plat of Prophet's Ridge subdivision shows a minimum platted rear setback of 25' for this lot. Petitioners may be required to amend their restrictive covenants or possibly replat in order to remove the platted setback.

The county's "unnecessary hardship" standard in the zoning ordinance includes the requirement that the hardship is neither self-imposed nor self-created. The definition of "hardship" in the zoning ordinance states that, "self-imposed situations...will not be considered hardships." While the patio slab was permitted under building code and zoning regulations, once enclosed, it is no longer conforming per ordinance standards. It is not the ordinance, but rather petitioners' desire and perceived cost-savings by constructing the sunroom addition on the existing slab that is causing the "hardship." There are several ways that petitioners could have a conforming addition: enclose the patio up to the 25' setback and leave the rest of the slab uncovered for storage use, remove 3.166' of the existing concrete or, remove the entire slab and build a smaller addition that meets the setback requirements. If this variance is not approved, however, petitioners' use of this property is neither altered nor diminished and they can continue using their open-air back patio.

Regarding the ballot items:

1. The Area Plan Commission at its June 21, 2006 meeting determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community because all other setbacks have been met and because of the man-made pond west of this site, no residences can abut the property to the rear.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. The proposed addition meets side setback requirements and is nearly 70' from the banks of the pond.
4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. The majority of the other lots within the subdivision are the same size, shape and have the same topography as this lot.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance because petitioners could still

enjoy the use of their home and existing patio without this variance. Staff has proposed three alternatives in lieu of this variance.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed or solely based on a perceived reduction of or restriction on economic gain. While it would incur a likely substantial cost, there is no reason that petitioners could not remove part or all of the existing concrete patio and construct a sunroom that complies with the ordinance.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship; an addition which complies with the 25' minimum rear setback could be built.

**STAFF RECOMMENDATION:**

Denial

Please Note: If this variance is approved, the setback would meet zoning ordinance requirements, but the platted 25' rear subdivision setback is still enforceable through the covenants and recorded plat and should be resolved.

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